The Appellate Division rendered a per curiam decision, March 10, 1966, unreported, sustaining the judgment of the court below (R71).*

The Chancery Division of the Superior Court of New Jersey, on March 19, 1965, entered judgment for specific performance of the land sale contract in favor of the purchasers on resisted proposals of settlement made in open court, unreported (R62).

JURISDICTION

The judgment of the Supreme Court of New Jersey was made and entered, May 3, 1966 (R80). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3). No applications were made for rehearing or for extensions of time.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article 1, Section 10(1): "...impairing the obligation of contracts"; Article VI, Section 2: "This Constitution and the laws of the United States...shall be the supreme law of the land, and the judges in every State shall be bound thereby..."; Amendment, Article V: "...nor shall any person...be deprived (of)... property, without due process of law"; Amendment, Article XIV; Section 1: "...nor shall any State deprive any person of...property without due process of law,....".

28 U.S.C. Section 1257 (3). Statutes of New Jersey relating to specific performance. N.J.S.A. 46:30-74.

QUESTION PRESENTED

Can an aged, illiterate land owner be coerced, judicially or otherwise, to convey land, more than described in the original written contract, to subordinate a first purchase-money mortgage, to a large conventional or construction mortgage, on resisted proposals of settlement exerted an entire day in open court?

STATEMENT

Sophie Wojton, widow, then single, on May 2nd, 1962, entered into a written contract to sell to plaintiffs, Domenick Santella and Joseph Desimone, trading as Homestead Construction Company for construction of dwellings, vacant land, lying between Munsel Avenue and Morris Avenue, Linden, New Jersey, for the purchase price of $42,000 payable deposit of $4,000 cash to be held in escrow, $20,000 cash on closing, and a purchase-money mortgage of $18,000 for two years at annual interest of 5% (R2, 4, 15, 20, 21, 23).

The owner reserved from the sale a lot 50 X 150, upon which the purchasers agreed to build for her a two-family house, at a price and according to specifications detailed in the written contract (R12, 37, 65).

Closing of title was set for September 1st, 1962. The purchasers breached the closing date, whereupon thirteen months thereafter the owner by certified mail, on October 14, 1963, notified the purchasers that their breach of the contract rendered it null and void (R4, 6).

The following month, purchasers instituted their chancery action for specific performance (R1). The seller answered and counterclaimed, alleging plaintiffs' breach of contract; notice that the contract was rendered null and void; that purchasers agreed to assume State rights to visible surface-water stream, traversing the land, and that plaintiffs' claim of defects of title were non-existing; and, counterclaimed for plaintiffs' willful waste in demolishing owner's building on the land, leaving accumulated uncarted debris costing $2,000 (R5).

Following issue drawn on respective pleadings and pre-trial order (R8-10), the trial date was set for May 19, 1964. The seller appeared prepared to defend against plaintiffs' action for specific performance; and, all parties present, on inquiry of the trial judge in his chambers informed the judge the defense of plaintiffs' continuous breaches; that the chancery court could not enforce the specific performance of the contract, because the court could not supervise plaintiffs' construction of the two-family dwelling for the title owner; that damages at law were adequate; and, that owner suffered demolition of her building.

Thereupon, in chambers and in open court, the judge undertook to have the parties make, offer proposals of settlement. It was like an auction; consumed all day, through three recess periods besides the lunch hour; the aged, illiterate owner testifying through an interpreter. In the midst of confusion, pressure, the owner testified that she feared a second mortgage, under a large blanket construction mortgage, to replace her first purchase-money mortgage; that the $20,000 cash payment on closing would be dissipated by payment of the two-family house to be built and could not

protect herself against a foreclosure, if the purchasers defaulted thereon (R30, 31).

Her verbatim protestations were:

> "The Court: Your mortgage will be second of $18,000?
>
> A. I don't want second mortgage, it isn't good" (R30).

* * *

> The Court: ... They are now willing to make the first mortgage $20,000 instead of $25,000?
>
> A. I don't want second mortgage. I'm afraid" (R33).

Prior thereto, on the subject of subordinating her first purchase-money mortgage of $18,000, the following of record took place:

> "The Court: ... She is behind a $25,000 first mortgage. That isn't what her agreement calls for at all.
>
> Mr. Bozza: Which would be almost the full purchase price, meaning they aren't laying out any money of their own.
>
> The Court: They are in on nothing" (R22).

* * *

> "The Court: (On owner's doubt purchasers will build) ... Her position is well taken. The buyers haven't got a nickel in the property ..." (R32).

* * *

"Mr. Bozza: (Exhorting the use of cash at the closing to buy off the first mortgage in case of foreclosure)...hold on to it.

A. I need $22,000 to build house (on lot 50 X 100 she reserved for that purpose) I won't have any money. I old. I can't go to work" (R30).

The Court: ...(You won't have any protection)...is that what you mean?

A. I won't have any protection against $25,000 mortgage" (R31).

* * *

"The Court: There is no guarantee (R32).

The petitioning-seller urged in the appellate courts below that manifest injustice is apparent in the drastically oppressive new terms and conditions imposed on her by the settlement proposals, embraced in the judgment of the court, compelling the conveyance of more land than originally agree to be sold; without any appraisal of its valuation; diminution and subordination of her first purchase-money security; insurmountable hazards, risks and financial loss to her damaged property, in violation of her constitutional right to the possession, use, and enjoyment of her property and right to dispose of it with freedom to contract and with due process.

Finally, even the new closing dates fixed by the court for June 25, 1964 and April 9, 1965, the purchasers breached and dishonored (R51, 52, 65).

The petitioner raised the issue of denial of constitutional right of property and freedom to contract in the following manner:

In the Appellate Division brief, an argument of the questions involved:

> "B. Especially, when it visits irreparable financial hardships, hazards, loss, damage and injury upon an old, illiterate vendor, (subordination of her first purchase-money mortgage; expression of fears and insecurity and demolition of her house)" (R68).

It was argued:

> "The foregoing detailed and enumerated hardships, foregoing stated subordination of mortgage security, surrender of additional land and uncompensated destruction of her house subject the defendant to such substantial suffrance of constitutional right to and protection of property, as a bar to a judgment for specific performance.
>
> Especially, in a court of equity in every contract there is an implied covenant of good faith and fair dealing that prevents a party from the destruction of the property of another or from hampering or frustrating its use and enjoyment" (R69).

In the petition for certification to the Supreme Court of New Jersey, under the questions involved:

> "I. Proposals For Settlement, In Open Court In Lieu Of Trial On The Merits, Are Unenforcible For Specific Performance To Convey Realty When Its Old, Illiterate Owner By Pressure And Oppression:
>
> 1. Suffers hardship, injury and damages by the drastic changes of the terms and conditions of her original written contract,

compelling her to convey (more land, subordinate her first mortgage, to excessive mortgage of speculative-builders with insufficient investment, defaulting in closing for years vitiating contract noticed them by certified mail" (R74).

It was argued:

"Illegal meddlesome interference is present, where a contract is devoid of any wards of the court as parties; absent any racial restriction or discrimination; where there is no emergent exercise of police power requiring moratoria; and, under the guise of proposals of settlement, harsh, inequitable, unconscionable terms, foreign to the original contract is imposed, impairing the freedom to contract, the right to own, possess, use and enjoy property; and, in violation of the constitutional right of due process to protect and defend any invasion and enchroachment thereof. United States Constitution, Art. I, Sec. 10(1); 14th Amendment; Lochner v. N.Y., 198 U.S. 45 (1905), 25 S. Ct. 539" (R81, 80).

"When a client's state of mind is explored by query in open court by client's attorney and the client repeatedly expresses disapproval of proposals of settlement, asserting substantial constitutional rights, the attorney cannot countermand his client's rightful position" (R80).

The protested settlement proposals, which became the basis for the judgment, sought to be reviewed, was a complete rewriting of an entirely new contract, as admitted by the court and counsel for the purchasers.

"The Court: ... Actually what has been accomplished here is a rewriting of the contract" (R27).

Mr. Wade: We are in effect rewriting the contract" (R20).

In addition, as set forth in the statement of questions involved:

"... to grant it seems inequitable, unconscionable and abuse of discretion, especially, when it visits irreparable financial hardships, hazards, loss, damage and injury upon an old, illiterate vendor" (R68).

This contention was repeated in the questions involved and argued in the petition for certification to the Supreme Court of New Jersey (R74).

The remedy of specific performance in American equity jurisprudence has been long engrafted from the English Court of Chancery. In New Jersey by statute, it has been expanded to include chattels: New Jersey Statutes Annotated 46:30-74:

"Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree, direct that the contract shall be performed specifically without giving the seller the option of reclaiming the goods on payment of damages. The judgment or decree may be unconditional or upon such terms and conditions, as to damages, payment of the price and otherwise, as the court may seem just."

The remedy of specific performance is hypothicated on the theory that the contract:

> "...transmits an actual equitable estate, and impresses on the legal estate a trust for the benefit of the vendee" Haughwout v. Murphy, 22 N.J. Eq. 531 (1871).

However, it will be decreed only when there is the necessity to do complete justice. Bowker v. Cunningham, 78 N.J. Eq. 299 (Ch. 1911), 79 A. 608. It is not a matter of right, as a positive right ex debito justitiae. Cline v. Kurzweil, 141 N.J. Eq. 508, 58 A.2d 281, aff'd, 1 N.J.407 (Ch. 1948), 64 A.2d 66.

Unlike the contract in the judgment sought to be reviewed, the contract must be certain and fair in all its parts and complainant is in no default and ready and willing to perform the contract. Locander v. Lounsbery, 24 N.J. Eq. 417, rev'd, Lounsbery v. Locander, 25 N.J. Eq. 554 (Ch. 1874).

The petitioner argued in the appellate courts below that the pressured proposals of settlement devolved upon her such substantial loss of valuable property, diminution of her first-mortgage security and to the payment of the balance of purchase price that its enforcement against her aged, illiterate owner would be unconscionable, harsh and inequitable, in violation of due process and constitutional right of freedom to contract. Petitioner also emphasized an entirely new contract was written, foreign to the terms of the original contract.

Courts do not rewrite contracts. In the case of St. Martin v. Rosehach, 2 N.J. Super. 404, at page 406, it was stated pointedly:

"Courts will not supply missing terms and compel the defendant to do that which he never agreed to perform."

In Migel Inc., v. Bachofen, 96 N.J. Eq. 608, 126 Atl. 396, pp. 611 to 612, it is stated dispositively:

"...Where the enforcement of a contract will be attended with great hardship and manifest injustice to the defendant, the court should always refuse its aid."

In Restatement of the Law of Contracts, Section 367, 1932:

"Specific performance of a contract may be refused if

* * *

(b) Its enforcement will cause unreasonable or disproportionate hardship or loss to the defendant...."

Michalski v. Michalski, 50 N.J. Super. 454 at page 466, denying specific performance on causing defendant's change of position, applied the test in Pomeroy's Equity Jurisprudence, 5th Edition, Section 1405a, page 1043:

"...The contract must be perfectly fair and equal and just in its terms and in its circumstances. If, then, the contract itself is unfair, one-sided, unjust, unconscionable, or affected by any other inequitable feature; or, if its enforcement would be oppressive or hard on the defendant, or would prevent

his enjoyment of his own right, or would work injustice; or if the plaintiff has obtained by sharp and unscrupulous practices, by overreaching by trickery, by taking undue advantage of his position... then a specific performance will be refused...."

At page 1944:

"...The oppression or hardship may result from unconscionable provisions of the contract itself; or it may result from the situation of the parties, unconnected with the terms of the contract (negotiation and execution, external facts affecting the defendant)."

The contract contained no clause for arbitration and award or for accord and satisfaction, which would permit a State Court to rule such clauses integral and inseverable from the contract, presents for determination a non-federal question, relegated only to the interpretation of independent state law, as in the cases of United States v. Paramount Famous Lasky Corporation, 34 F.2d 984 (D. C.), aff'd, 282 U.S. 30, 51 S. Ct. 42, 75 L. Ed. 145; Fox Film Corp. v. Muller, 296 U.S. 207 (1935), 56 S. Ct. 183, 80 L. Ed. 158.

The defendant's affidavits in opposition to the motion to settle the judgment of the Chancery Division of the Superior Court of New Jersey, clearly state the fact that the purchasers defaulted on the original closing date of September 1st, 1962 and the court fixed closing dates of June 24, 1964 and April 9, 1965, giving reasons insufficient in law. It reflects their promotional scheme without sufficient funds twice stated by the court of judgment (R51 to 59; 22, 32).

It will be recalled that thirteen months following the breach of the first closing date, September 1st, 1962, the defendant sent purchasers a notice by certified mail that they had rendered the contract null and void (R4, 6).

The plaintiff-purchaser had unclean hands prior to and subsequent to the pressured, all day new contract proposals of settlement, foreign to the original written contract, inimical to the aged, illiterate land owner, as to pose the principle of estoppel against them, because of repudiation or the harmful change of position in the terms of the contract, as enunciated in Siere v. Police, 4 N.J. Super. 230 (1949); Gitomer v. United States, 140 N.J. Eq. 531 (1947); Gural v. Engle, 128 N.J.L. 252.

When it became evident to the court that the defendant labored under qualms, indecisiveness, fears and displeasure, a plenary trial should have been resorted to, as the only means of affording any finality or conclusiveness to the search for the truth of defendant's affirmative defenses of plaintiffs-purchasers breaches of the contract at issue for trial.

It is not competent for litigants to merry-go-round a judicial function by diminishing or increasing judicial power and making the presiding judge a mere umpire between contending lawyers grasping for advantages for their respective clients bound by an executory contract.

CONCLUSION

The defendant property-owner was palpably denied due process of law under the Amendment Fifth Article of the United States Constitution, under the Fourteenth Amendment, and the freedom to contract under Article I, Section 10(1). Lochner v. New York, 198 U.S. 45 (1905), 25 S. Ct. 539; Fletcher v. Beck, 3 L. Ed. 162 (S. Ct. of U.S., 1910).

This Honorable Court of last resort in the nation has frequently held that in the exercise of its appellate jurisdiction, it has the power not only to correct errors of law in judgment under review but also to make such disposition of the case as justice requires. State Tax Commission v. Van Colt, 306 U.S. 511, 59 S. Ct. 605, 83 L. Ed. 950.

For the substantial constitutional grounds herein presented, the petitioner humbly prays that this Honorable Court will, in its sound judicial discretion, grant its exclusive Writ of Certiorari to review the judgment of the Supreme Court of New Jersey.

Respectfully submitted,

s/ Frank B. Bozza
Attorney for Petitioner.

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In the Supreme Court of the United States

October Term 1966

SOPHIE WOJTON, also known as Sophie Gural, now deceased, by STANLEY GURAL, Executor of the Estate,

Petitioner,

v.

DOMENICK SANTELLA and JOSEPH DESIMONE, t/a HOMESTEAD CONSTRUCTION COMPANY,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondents pray that this court will deny the petition for a writ of certiorari to review the judgment of the Supreme Court of New Jersey, on the ground that no special or important reason for review is presented by the petitioner.

OPINIONS BELOW

The petitioner correctly states the opinions below of the Supreme Court of New Jersey and the Appellate Division of the Superior Court of New Jersey but incorrectly states the judgment of the Chancery Division of the Superior Court of New Jersey, the trial court. The judgment of this court was for a "...specific performance of a settlement agreement reached between the parties in open court on May 19, 1964, and spread upon the record..." (R62a).

COUNTERSTATEMENT OF QUESTIONS INVOLVED

1. The judgment appealed from being a judgment enforcing a settlement agreement reached in open court, can the appellant on appeal--

A. Raise issues not germane to the judgment entered in the cause?

B. Avoid the finality of the judgment?

C. Raise issues already well settled by the courts?

2. Will this court entertain jurisdiction where no special or important issue is presented and where no federal question of substance was decided by the state courts?

OPPOSITION BRIEF

COUNTERSTATEMENT OF CASE

On March 19, 1965, the Chancery Division entered a judgment against defendant compelling her to specifically perform a Settlement Agreement entered into by the litigants on May 19, 1964 (R62a). The defendant apparently appealed to the Appellate Division from this judgment. The Notice of Appeal (R66a) did not state the exact nature of the appeal and this creates confusion from the outset because the only issues raised by the defendant before the Appellate Division was whether or not the lower court was justified in ordering specific performance of a contract for the sale of land, and this was not the issue and never was the issue. The defendant again by this Petition seeks to litigate an issue that was never before any court in the first instance.

To clarify, the original suit was a suit against defendant to compel her to specifically perform a contract for the sale of land (R1a). On the day scheduled for trial, May 19, 1964, the litigants conferred and settled the case in open court. Later defendant refused to convey. A Motion was made and on March 19, 1965 a judgment was entered by the Chancery Division (R42a to R62a). This judgment ordered the defendant to specifically perform the settlement agreement reached in open court on May 19, 1964. Therefore, the judgment of the Chancery Division was to specifically perform a settlement agreement and not to specifically perform a contract for the sale of land. While the end result of the order to perform a settlement agreement is in effect an order to convey the land, there is a great legal distinction between enforcing a settlement agreement made in

open court and an enforcement of a written contract. The only proper issue that can be raised in any Appellate Court is the justification for the enforcement of the settlement agreement.

Many conclusions and inferences of fact are drawn by defendant in her petition. Many of the conclusions and inferences are extraneous to the question in issue and are not supportable in fact or in the record. The settlement proceeding was not adversary in nature. The record merely recorded the settlement and whether or not defendant agreed to the settlement. Most of the facts referred to by the defendant in her petition are her own version of facts that occurred prior to the settlement agreement. These facts are clearly extraneous to the issue.

At no time did defendant raise the issue that the settlement agreement was unfair to defendant until the defendant appeared in the Appellate Division. Defendant's Petition is completely devoid of any presentation of facts that prior to the appeal she took the position that the settlement was unfair. The transcript of the proceedings concerning the stipulation of settlement is included in the appendix to defendant's petition (R11a to R41a). It is devoid of objection by the petitioner as to the fairness of the settlement. Defendant's petition presents no affidavits or testimony relative to the question of fairness of the settlement. As a matter of fact, none will be found, as the only issue raised by defendant in response to the motion to specifically enforce the settlement agreement was that there was a delay in enforcing the agreement. The Chancery Division found in its judgment that the delay was excusable (R62a) and the Appellate Division made the same determination (R71a).

Petitioner, through her attorney, Edward W. McGrath, Esq. attempted to clear the title to her land from 1956 through 1963. In 1962, she signed a contract to sell the land to plaintiffs and to clear the title. In October 1963, despite the fact that title was not yet clear, she changed her mind and refused to sell by sending a letter purporting to terminate the contract (R4a). In November 1963, plaintiffs sued for specific performance (R1a). On May 19, 1964, the parties, in open court, agreed to a settlement of the suit, which partially changed the terms of their original contract (R11a). During the settlement negotiations the defendant was represented in court by two attorneys; a man who later became her husband, now pressing this petition as the Executor of her estate; and also by another confidant, the interpreter (R28a). A tentative closing date was set for June 25, 1964. The closing date was adjourned a week and a half at the request of respondent's attorney, with the consent of the defendant's attorney, upon the last minute discovery of a municipal assessment against the property (R42a). The plaintiffs agreed to pay the assessment and called for delivery of the deed on the adjourned date (R43a). Defendant refused to convey (R42a). Time of the essence was made for July 30, 1964 (R43a). Letters and a telegram were transmitted and personal contact was made with defendant (R43a; R46a). She continued to refuse to convey. On August 29, 1964, one of plaintiffs' partners died. He had been terminable for about a month prior thereto and incapable of making decisions and authorizing the respondant's attorney to take further proceedings on the lawsuit (R48a). His widow was confused after his death and was incapacitated until October 1964 (R49a). The Motion to specifically perform the settlement agreement was brought in November

1964, and was argued intermittently in January and February of 1965. On March 12, 1965, the Chancery Division found that the delay in bringing the motion was excusable and order the specific performance of the settlement agreement. Plaintiff was compelled to bring another motion to settle the terms of the judgment, which was settled on March 19, 1965. Defendant appealed and the Appellate Division affirmed the Chancery Division on March 10, 1966. The Supreme Court of New Jersey denied defendant-appellant's petition for certification May 2, 1966.

ARGUMENT

Point I

Settlements made in open court of pending litigation are enforced by the courts.

The petition should be denied. None of the requirements of Rule 19 are or can be met by this petition. There is no question of substance not heretofore determined by a court of last resort in New Jersey. The decisions of the New Jersey Supreme Court and the New Jersey Appellate Division are not in conflict with any other decision.

No substantial question, or special, or important reason, is raised by the petition. Defendant is simply looking for another forum to argue the case and to argue facts that have very little to do with the original judgment.

The real issues in this case were well settled in previous cases of DeCaro v. DeCaro, 13 N.J. 36, 97 A.2d 658 (Sup. Ct. 1953); Kupper v. Barger, 33 N.J. Super. 491, 111 A.2d 73 (App. Div. 1955);

Clarkson v. Kelly, 49 N.J. Super. 10, 138 A.2d 747 (App. Div. 1958); Jannarone v. W.T. Co., 65 N.J. Super. 472, 168 A.2d 72 (App. Div. 1961) 42 A.L.R. 2d 1312. These cases are directly in point and emphasize the high degree of favor held by the courts toward compromise and settlements reached by the litigants — particularly where such agreements are reached in open court.

Defendant's petition cites no cases and offers no argument that the above cases are not the law or that the law should be changed. Defendant completely ignores the words of Justice Jacobs in DeCaro, supra, that in the absence of "shocking inadequacy of consideration justifying a refusal to enforce the agreement" the agreement will stand, and that the court will not inquire into the adequacy or inadequacy of consideration of a compromise fairly and deliberately made, and that the only possibility for an inquiry to be made is where the inadequacy of consideration is so gross as to shock the court's conscience.

Defendant cannot escape the fact that the very same counsel who now presents her petition stood alongside her, together with her other attorney, in open court, the day the settlement was made and said nothing about the unfairness of the settlement. Neither of her attorneys said anything concerning unfairness during arguments on the motion to specifically perform the settlement agreement. For the first time, on appeal, defendant takes the position that it was unfair because defendant was "old, illiterate, pressured, and suffered a hardship." Defendant's argument is neither supported in fact, nor can future proceedings remedy the deficiency as defendant is now deceased.

The facts will not support the defendant's allegations of illiteracy, pressure or hardship. She was represented in court at the time of the settlement by two members of the New Jersey Bar, as well as two other confidants and advisors. They stood mute when defendant, on the witness stand, agreed to the settlement. In addition, the judge went to considerable length and took much time to be certain that defendant understood the terms of the settlement and agreed to the terms. As to the high regard for upholding settlements of this type, in the presence of counsel's guidance at the time of the settlement, see Jannarone v. W.T. Co., supra.

Point II

Certiorari will be denied when there is no special or important reason presented and where no federal question of substance was determined by the state court.

The record is completely devoid of a constitutional question ever having been raised before or decided by the state courts. The only reference to a constitutional question during the entire proceeding was by way of oral argument in the Appellate Division and in an incidental statement in the Appellate Division brief. Both in oral argument and in the brief, reference is made only in passing and to matters not germane to the issues before the court. The decisions of all the courts are based primarily on contract law, a subject already fully covered by the New Jersey courts and other state courts.

This court should not exercise its discretion as the petition does not meet the criteria of Rule 19, that the case be one of special importance. The issue decided by the New Jersey courts is largely a local issue concerning itself with the New Jersey common law. If the court were to grant this petition, a litigant in any contract case could urge constitutional grounds to nullify his past agreements. Settlement in open court, particularly in light of the judge's great pains to ascertain that petitioner knew, understood and acceded to the proposed settlement, does not raise a constitutional ground of "illegal meddlesome interference." To the contrary, it supports the contention that all of the petitioner's rights were fully protected. Cf. United States v. Hougham, 364 U.S. 310, 5 L. Ed. 2d, 81 S. Ct. 13.

In the past this court has refused to permit a review unless the federal question has been specifically presented in the state court and was expressly or necessarily decided by the State court. Wilson v. Cook, Ark. 1946, 327 U.S. 474, 66 S. Ct. 663, 90 L. Ed. 793; Bailey v. Anderson, Va. 1945, 326 U.S. 203, 66 S. Ct. 66, 90 L. Ed. 3; Lynch v. People of New York, ex rel. Pierson, N.Y. 1934, 293 U.S. 52, 55 S. Ct. 16, 69 L. Ed. 191; Whitney v. People of State of California, Cal. 1927, 274 U.S. 357, 47 S. Ct. 641, 71 L. Ed. 1095; Edward Hines Yellow Pine Trustees v. Martin, Miss. 1926, 268 U.S. 458, 45 S. Ct. 543, 69 L. Ed. 1050.

Arguments of counsel in the state court form no part of the record. Gilson v. Chouteau, Mo. 1868, 75 U.S. 314, 8 Wall. 314, 19 L. Ed. 317.

Where the highest state court delivers no opinion, jurisdiction was denied where the opinion might have rested upon a non federal ground. Durley v. Mayo, F. Ca. 1956, 351 U.S. 277, 76 S. Ct. 806, 100 L. Ed. 1178. Where the absence of an opinion makes it impossible to determine that judgment could have been sustained independent of the federal question. Cuyahoga River Power Co. v. Northern Realty Co., Ohio 1917, 244 U.S. 300, 37 S. Ct. 643, 61 L. Ed. 1163.

The only power of the United States Supreme Court over state judgments is to correct them to the extend that they incorrectly interpreted federal rights. Herb v. Pitcarin, Ill. 1945, 324 U.S. 117, 65 S. Ct. 459, 89 L. Ed. 786.

The court will decline to review state court judgments which rest on independent and adequate state grounds, despite copresence of federal grounds. Fay v. Noia, N.Y. 1963, 372 U.S. 391, 83 S. Ct. 822, 9 L. Ed. 2d 837.

Petitioner attempts to invoke the jurisdiction of this court under 28 U.S.C.A. Section 1257(3). It is submitted that this Court should not accept jurisdiction of a case that fails to properly raise one or more constitutional issues. Petitioner sought the same review before the New Jersey Supreme Court that he seeks here. The New Jersey Supreme Court refused to review the case. It is urged that this fact is dispositive of the request to this court.

Respectfully submitted,

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